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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 In Re: Application of Hornbeam  
4 Corporation

5 14 MISC. 424 (VSB)

6 -----x

7 New York, N.Y.  
8 November 10, 2015  
9 10:30 a.m.

10 Before:

11 HON. VERNON S. BRODERICK,

12 District Judge

13 APPEARANCES

14 HOLLAND & KNIGHT LLP

15 Attorneys for Hornbeam Corporation

16 BY: JAMES H. POWER

17 JOSHUA McLAURIN

18 MARKS & SOKOLOV, LLP

19 Attorneys for Intervenor Panikos Symeou

20 BY: BRUCE S. MARKS

21 -and-

22 REED SMITH LLP

23 Attorneys for Intervenor Panikos Symeou

24 BY: SAMUEL KADOSH

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1 THE DEPUTY CLERK: Counsel, please state your name for  
2 the record.

3 MR. POWER: James Power for Hornbeam.

4 MR. McLAURIN: Josh McLaurin for Hornbeam, pending  
5 admission.

6 MR. MARKS: I'm Bruce Marks for Mr. Symeou.

7 MR. KADOSH: Sam Kadosh, also for Mr. Symeou.

8 THE COURT: You may be seated. Let me review for the  
9 parties the documents I have in connection with today's court  
10 appearance. I have the October 8 letter of Mr. Power. It is a  
11 joint letter.

12 MR. POWER: Yes.

13 THE COURT: With Exhibits A and B. I have the  
14 November 3 letter of Mr. Power with the attachment of a  
15 spreadsheet, and the response dated November 4 from Mr. Marks.  
16 I have another letter from Mr. Power dated November 3, and a  
17 response to that letter dated November 4 from Mr. Marks.

18 Am I missing any submissions that the parties have  
19 made in connection with today's court appearance?

20 MR. MARKS: Your Honor, we have two charts we want to  
21 hand up to the Court.

22 THE COURT: Okay. Have you shared them with your  
23 adversary?

24 MR. MARKS: We did, your Honor.

25 MR. POWER: Which charts?

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1 MR. MARKS: The unrelated entities and -- the related  
2 entities and the unrelated persons. Your Honor, may I  
3 approach?

4 THE COURT: You may.

5 MR. MARKS: To whom should I give this, your Honor?

6 MR. POWER: Can I have a copy please?

7 MR. MARKS: Yes, of course.

8 I can explain what they mean in due course, your  
9 Honor. We worked over the weekend and all of yesterday to  
10 prepare these. We thought the information would be helpful to  
11 the Court when we discuss where we are today.

12 THE COURT: So when it is appropriate, when you get to  
13 the appropriate point, you should feel free to point me to  
14 whatever you want me to know with regard to the charts.

15 MR. MARKS: Thank you, your Honor.

16 THE COURT: Just a matter of housekeeping. My clerk  
17 informs me that she knows Mr. McLaurin, that they attended  
18 school together. And that I guess -- I don't know, friends?  
19 Friends. I put them on the spot. Just so that the parties are  
20 aware of that.

21 MR. POWER: Judge, I did not know that before I  
22 brought Mr. McLaurin in.

23 THE COURT: There is no reason necessarily that you  
24 would, yes.

25 MR. MARKS: In all full disclosure, your court

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1 reporter appears to know Mr. Kadosh.

2 THE COURT: So I take it then I have, with the  
3 addition of the two charts that were just provided, I have all  
4 of the information that I need for today's conference.

5 MR. POWER: There were two recent Alabama opinions. I  
6 don't know if the judge wants to be informed of those.

7 THE COURT: I have the opinion that was docketed as  
8 document 61.

9 MR. POWER: There was a recent opinion last Friday in  
10 response --

11 THE COURT: Was that the stay?

12 MR. POWER: The stay which was denied by the District  
13 Court.

14 THE COURT: I haven't printed that out, but I am aware  
15 of that.

16 MR. POWER: Just so the Court is fully aware, the 11th  
17 Circuit just yesterday issued what is called an emergency  
18 motion for -- granted Mr. Symeou's request for an emergency  
19 stay pending appeal, and they did issue what they call a  
20 temporary administrative stay. Yesterday there was about 300  
21 pages filed in the morning with the Circuit Court. We were  
22 given about two hours to respond. We did get an order from the  
23 11th Circuit that issued this temporary administrative stay.  
24 The Warren Steel bank records were ready to be produced by  
25 Regent Bank to us, so those are now on hold.

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1 THE COURT: The 11th Circuit, that was in --

2 MR. POWER: The Alabama action in which the District  
3 Court authorized the Warren Steel records. A request to stay  
4 the production of those records was made, that was denied by  
5 the District Court. We were ready to get the records yesterday  
6 pursuant to the subpoena, and there was an emergency stay that  
7 was made to the 11th Circuit to prevent the disclosure of the  
8 Warren Steel Regent bank records.

9 THE COURT: The Warren Steel Regent bank records were  
10 being obtained pursuant to 1782 subpoena?

11 MR. POWER: Yes, your Honor.

12 THE COURT: Okay. That raises an issue of the 11th  
13 Circuit's recent decision in Glock, which I don't think, at  
14 least to date, that either party has cited, but as we go  
15 through the various arguments, are you familiar with the Glock  
16 decision?

17 MR. POWER: We did address those. The Glock, the  
18 Clerici case, those were all addressed in significant briefing  
19 before the district judge in Alabama. We can give the Court  
20 copies of our briefs. Both parties had the opportunity to do  
21 that. We were not planning on engaging in any sort of  
22 extensive legal arguments.

23 THE COURT: I think I have enough to handle without  
24 getting into what's going on in Alabama or the 11th Circuit.  
25 It sounds like there is a lot of things going on there.

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1           Let's talk about now the protective order. What I  
2 plan to do is go through and provide the parties an opportunity  
3 with regard to each of the disputed sections to address more  
4 fully the arguments they've put in the letter. And then as we  
5 go through, if I have any questions I'll ask them, but I may  
6 have rulings at that time.

7           I know that Mr. Symeou had made the request to file a  
8 motion in connection with that. I can tell you right now I'm  
9 not inclined to do that in light of the submissions I've  
10 received so far and the argument we're going to hear today.

11           But, why don't we start with what I see as the first  
12 issue, which relates to use of the materials. I'll state where  
13 the issue stands.

14           Mr. Symeou argues that the material should only be  
15 used in connection with the BVI or the specific foreign  
16 potential litigations that were indicated in the initial  
17 petition. I take it that Hornbeam views it should be able to  
18 use them in connection with motions before me, in other words,  
19 in this Court, in connection with the motion for  
20 reconsideration. I believe that I received a letter indicating  
21 that. I'm not sure there is a dispute necessarily about that.  
22 I don't think there is.

23           I think where the dispute lies is that Hornbeam would  
24 like to use the materials in connection with other 1782  
25 applications that it has made, and I think that it may intend

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1 to make, although I'm not entirely sure about that.

2 So why don't I hear from Hornbeam and then I'll hear  
3 from Symeou.

4 MR. POWER: Yes, your Honor. Thank you. May I stay  
5 here?

6 THE COURT: Yes.

7 MR. POWER: Yeah, I think what the instructions we got  
8 from your Honor as we took them to be is that we had every  
9 right to come back to your Honor, and for good cause shown,  
10 obtain additional 1782 subpoenas. And again, it would make  
11 sense to us as we got the records, for example, like the  
12 records we just submitted, where we determined, we found out  
13 from one of the wire transfers or series of wire transfers from  
14 one of the banks that \$82 million was transferred from Halliwell  
15 for the purchase of another steel mill that my client knew  
16 nothing about, yet he had owned shares in Halliwell for two  
17 years up to that point.

18 What would make sense, the types of subpoenas we would  
19 want to serve there, is Jefferies was the investment bank that  
20 would put together the purchase of those transactions. They  
21 are here in New York.

22 One of the other things we've learned, not necessarily  
23 from the documents before that we received from the 1782s, but  
24 from records that we obtained along the way in other means was  
25 that an investment bank, Sagent, it was putting together the

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1 very proposal on the valuation of Warren Steel, that they were  
2 pitching it to the industry to sell it. Sagent is also here in  
3 New York. That is also something else we would like to follow  
4 up with.

5 Essentially, by the terms of your Honor's order which  
6 said we can come back to you for good cause shown, we feel that  
7 if we get records that are showing specific things about the  
8 transactions and the relationships and between the Optima  
9 entries, if we were to get these wire transfer records and they  
10 were to demonstrate evidence of certain relationships between  
11 Mr. Kolomoisky, Mr. Korf, the Optima entities, Hornbeam,  
12 Halliwell, and Warren Steel, that we would be able to use those  
13 records themselves that we obtained by permission and authority  
14 of this Court, to go to this Court and say, hey, look, here is  
15 some additional evidence. We think we can make a case based on  
16 this evidence that we can either serve another subpoena on one  
17 of the entities that's involved in one of these relevant  
18 transactions, like the \$82 million from Halliwell to another  
19 entity, for the purchase. That's MS Metals.

20 So, in the most simplistic form, we had expected or it  
21 would make sense to us that records that we obtained here could  
22 be used to go back to your Honor for good cause shown to expand  
23 the current subpoenas, to issue new subpoenas based on that  
24 information.

25 In conjunction with that, as we recently learned in

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1 Alabama, where we had the judge issued originally a subpoena  
2 order that was very much -- I think mirrored exactly what your  
3 Honor issued. It included all of the Optima related entities.  
4 All of the entities that had made more than \$120 million of  
5 loans to Warren Steel. So we had listed those entities, we had  
6 described why we thought those entities were relevant, and we  
7 had said that the nature of the relationship between the  
8 parties, the commingling of funds, the transactions, whether it  
9 be undervalued or overvalued between Warren Steel and these  
10 other entities, they were all relevant.

11 The judge originally agreed. Pointed it out on the  
12 bench. Mr. Symeou made a request and argument it should be  
13 narrowed down to Warren Steel. The judge accepted that in the  
14 first instance and said, yet, I am giving you every opportunity  
15 to come back to me after you get the Warren Steel records to  
16 come back to me for good cause shown to expand and include the  
17 original entities in the order for discovery, and that's the  
18 Optima entities. We can give you the list.

19 So we were waiting, again, hopeful as of yesterday we  
20 would have gotten all the Warren Steel records as the judge in  
21 Alabama had denied the request to stay the production of those  
22 records twice. We may not get those records now for, I don't  
23 know, depending on what the 11th Circuit says, two weeks, three  
24 weeks, four weeks, six months, or a year.

25 Of course the Warren Steel records from the bank would

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1 be used also to cross reference all of the wire transfers that  
2 we got here. Just as we see from the Halliwell transfers of \$82  
3 million to buy a steel mill that our client never knew about  
4 despite him being a one-third owner of Halliwell, the way the  
5 transactions are set up it makes sense to be able to cross  
6 reference transactions. Money going into Warren Steel, money  
7 going out of Warren Steel to one of the Optima entities. We  
8 see a pattern of this developing from our review of the wire  
9 transfers.

10 So in going back to the Court, for example, if we see  
11 other transfers, there is I think \$5 million from Mr. Korf's  
12 New York attorney's escrow account -- unexplainable, because  
13 the references don't state -- going into Warren Steel. I think  
14 from my practice, I do a lot of fraud and asset recovery,  
15 people will tell you it is a red flag immediately when a lawyer  
16 is using his IOLA attorney's account to fund money coming in  
17 from outside the United States through his account to invest  
18 for a U.S. local entity into, in this case it was Warren Steel.

19 So, if we were to come to the Court and say we found  
20 these particular transactions, we would like to use them before  
21 your Honor to say we think we've established good cause shown.  
22 Of course that would be entirely up to the court to determine  
23 whether that good cause was met. But it also make sense to use  
24 this evidence, which is very much related to the very things  
25 we're asking in Alabama, i.e., requests for the actual bank

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1 records of these other Optima related entities that relate to  
2 these transactions. That's where the New York City records are  
3 going to be extremely relevant in tying the pieces together in  
4 other 1782s and/or identifying very relevant and material  
5 targets to include as the recipient of a subpoena in another  
6 district, wherever they may be found, and we can sort of see  
7 from the wire transfer records based on addresses and things  
8 where sort of a potential target is located.

9 For example, the \$80 million from Halliwell to Metals  
10 Resources is a Michigan entity. And we know that Jeffereys did  
11 that transaction, and Jefferies is here in New York. It seems  
12 reasonable and good cause, to us, at least, that we would be  
13 able to go to the Court and use those records and ask for an  
14 additional subpoena on, for example, Jefferies on that  
15 particular transaction of 80 million from Halliwell.

16 That's essentially the general summary of why we think  
17 the New York records are very useful to the Court and to us in  
18 determining what's good cause shown. If we don't have any  
19 access to any records, we're not allowed to gather any evidence  
20 or don't have anything, one would expect it is difficult to  
21 show good cause shown. We expect that good cause shown would  
22 be from the information we're gathering through various 1782s.  
23 Again, it is only in 1782s. As the Court is well aware now,  
24 the Ohio TRO action has been vacated, there is no action  
25 pending in the United States. We will, as we've agreed to the

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1 Court, and represented to the Court, we do not intend and will  
2 not use any records that are obtained from 1782s in an action  
3 in the United States. These are for actions in the BVI which  
4 we are moving forward with.

5 I would suggest that the delays we're facing in  
6 putting together something we can produce in the BVI is quite  
7 reasonably a matter of getting the records like the Warren  
8 Steel records that we thought would come without much fanfare  
9 from Alabama. We now may have to wait another six months, a  
10 year, before we get those records. And again, those are the  
11 types of records that we're putting together to make sure we  
12 have the entire scope of the operations surrounding Warren  
13 Steel, the \$120 million in funding, where the money went,  
14 whether it actually went there, whether it was used to actually  
15 fund these other Optima entities in their business endeavors.  
16 Those are the kinds of things we're looking at and those go  
17 directly to the claims in the BVI.

18 MR. MARKS: Your Honor, thank you. Just to put where  
19 we are in perspective. If we can step back a second. Hornbeam  
20 filed claims in the BVI.

21 THE COURT: Could you adjust the microphone.

22 MR. MARKS: I'll do this one here.

23 I'd just like to give that a little perspective.  
24 Hornbeam filed claims in the BVI that were found to be an  
25 abuse. They were ordered to pay \$846,000 by February 1st of

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1 2015, which they haven't done. They then filed claims in Ohio.  
2 My client's incurred hundreds of thousands of dollars defending  
3 those claims, and they were dismissed about a month ago.

4 Now here we are, they're trying to get records for  
5 Warren Steel which they should be trying to get in the BVI. If  
6 they want records of Warren Steel, which is the subsidiary of  
7 Halliwell, all they have to do is go to the BVI and file a claim  
8 before the BVI High Court to inspect the books and records of  
9 Halliwell, which would include the books and records of Warren  
10 Steel. And they haven't done that.

11 So if there is any delay on their part, it is because  
12 they haven't proceeded in the right court. So, it is not fair  
13 for them to suggest that we have caused any delay, when they  
14 were in the BVI in August of 2014, and nothing has stopped them  
15 from going back to the BVI, other than paying the \$846,000.  
16 And your Honor has found that it is not plausible that  
17 Mr. Shulman wouldn't be able to pay it. And therefore, that's  
18 really where they should be. That's my first point.

19 THE COURT: They made an application to get the Warren  
20 Steel documents in Alabama. And you're anticipating they'll  
21 make a similar type of request?

22 MR. MARKS: Well, your Honor, in effect they've done  
23 that here, because they sought the wire records of Warren Steel  
24 and Halliwell in this district.

25 Your Honor may not have reviewed our Rule 60(b)(6)

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1 motion, but our position is that that's a circumvention of the  
2 procedures of the BVI for the shareholder of a BVI company to  
3 get the books and records of the BVI company.

4 THE COURT: Warren Steel is not a BVI company.

5 MR. MARKS: It is a subsidiary of a BVI company, and  
6 as a result, the proper procedure, just like, your Honor, if I  
7 were invested in a Delaware company that had a Pennsylvania  
8 subsidiary, the procedure in the United States if you are a  
9 shareholder of the Delaware company is you go to Delaware, and  
10 you request the books and records of the Delaware company and  
11 its subsidiary.

12 THE COURT: My question though is are you conceding  
13 that were they to go, because, again, you're not dealing with  
14 domestic companies, right, you're dealing with a foreign  
15 company and a domestic company.

16 MR. MARKS: Right.

17 THE COURT: Are you saying that were they to go to the  
18 BVI and request the documents of Halliwell, that they would get  
19 the documents and be entitled to the documents that are the  
20 Warren Steel documents that may be located in this country?

21 MR. MARKS: The BVI court would determine the scope of  
22 what they're entitled to. We have said repeatedly, it is on  
23 the record, that Halliwell will accept that it is in the  
24 possession and custody and control of the Warren Steel  
25 documents. So if the BVI court says produce the Warren Steel

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1 documents, we will produce them. Like any court, your Honor,  
2 like a Delaware court, which would consider the request for  
3 books and records of a shareholder. The court could limit the  
4 request. The court could set conditions on the request. It is  
5 no different whether they invested in a BVI company, which was  
6 Mr. Shulman's choice, okay, let's remember. The three  
7 principals were originally shareholders of Warren Steel which  
8 is an Ohio company. They chose voluntarily to transfer their  
9 interests from Warren Steel to a BVI company. And there is  
10 reasons that people want to hold shares in an offshore company.  
11 There may be tax reasons, there may be other structural  
12 reasons. But that was a choice that Mr. Shulman made. But to  
13 answer your Honor's question, this is within the power of the  
14 BVI court to decide the scope of the books and records that  
15 they would be entitled to.

16 Your Honor, if I could give you an example.

17 THE COURT: Sure.

18 MR. MARKS: One of the problems that occurred here  
19 from our perspective, all right, is that they got wire records  
20 of Warren Steel. Those wire records reflect the bank account  
21 numbers of the persons who sent the records there, including  
22 Mr. Korf that Mr. Power just referenced. It is entirely fair  
23 game, I think, that if they went to the BVI, and they said  
24 would you produce the records by which Mr. Korf wired the money  
25 into the bank, they could produce the record that says

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1 Mr. Korf, it says the date, and it says the amount.

2 But the concern that we have, what happened here,  
3 which, of course, it was an ex parte proceeding and the  
4 subpoenas were served without notice to us and discovery  
5 received, we don't think a BVI court would allow them to get  
6 the information regarding Mr. Korf's personal account, or  
7 Mr. Kolomoisky's personal account, or Mr. Bogolubov's personal  
8 account.

9 Your Honor, can you look at the related entities chart  
10 now? This might be a good time to bring this up. Okay. What  
11 happened, your Honor, your Honor in the ex parte proceeding,  
12 you had your hearing and you accepted the representations that  
13 Mr. Power made, and you ordered the broad discovery on the 12  
14 banks. And that included all the wires, all wires to and from  
15 the related entities.

16 What happened, your Honor, is that banks produced  
17 records, and the related entities are on the left side. These  
18 are entities that were listed in the subpoena. These are the  
19 real entities. Next is the number -- these are the wires that  
20 were neither to nor from Halliwell. These are wires that have  
21 nothing to do with the dispute over Warren Steel. They  
22 produced over 5,000 wires. We worked all weekend to complete  
23 this chart.

24 We asked Mr. Powers over the last two weeks, please  
25 tell us which wires you think are unrelated, and he didn't

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1 provide any information to us. We had to do this ourselves.  
2 They got this information, with the exception of the Deutsche  
3 Bank subpoena, months and months ago, because we never knew the  
4 discovery was produced. And in a short period of time my  
5 office had to put this together using the spreadsheets. Some  
6 were the Excel spreadsheets and some were PDFs.

7 Your Honor, they have received information regarding  
8 over \$4 billion of transactions, these wires. And your Honor,  
9 remember the spreadsheet that Mr. Power showed you at the  
10 December 23 hearing?

11 THE COURT: Yes.

12 MR. MARKS: These wires show their addresses, they  
13 show their bank account numbers, okay. They showed the purpose  
14 of these transactions. We don't even know who they've been  
15 disseminated to because Mr. Powers hasn't told us. We've asked  
16 them, because we want to know who has actually received these  
17 wires, including people outside of the United States, okay, who  
18 are not subject to the jurisdiction of this court. They have  
19 information regarding over \$4 billion of wires involving  
20 Mr. Korf's personal transactions. The charities that he gives  
21 to, the location of his wife's account that he pays money into,  
22 the location of the nature of what he does in his personal life  
23 for entertainment. Things that, without getting into it, not  
24 everybody would want other people to know. They know who the  
25 customers of these unrelated companies are, because customers

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1 wire money into their account. They know who the suppliers are  
2 of these unrelated companies.

3 So, if you're asking me what might happen in the BVI,  
4 and we are going to get into the relief we're hoping your Honor  
5 would seek, a BVI court, we think, okay, in an ex parte  
6 proceeding, while they might give them the records that are  
7 relevant to Warren Steel, would have never given them the  
8 information that they now have regarding unrelated  
9 transactions, involving individuals, okay, and their personal  
10 bank accounts.

11 Not only even that, your Honor, they now, as you can  
12 imagine, these operating companies have employees, right. They  
13 have employees. Felman Trading has employees, the Optima  
14 companies have employees. They wired money into their employee  
15 accounts. I do that on occasion. Sometimes we pay employees  
16 with wires. Now they have the personal bank accounts of all  
17 these people.

18 So, to get back to what your Honor was saying, in the  
19 BVI, yeah, they would have a right to go in and to get the  
20 records that are related to Halliwell and the Warren Steel.  
21 Would they get the same information that they were able to get  
22 because they served subpoenas and didn't tell us? I don't  
23 think so. I think a BVI court -- and we're hoping that this  
24 Court will reconsider the scope of what they've received --  
25 would only give them what's relevant to the dispute, which is

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1 their allegation that there were false loans or their  
2 allegation that there was some type of transactions between the  
3 two companies.

4 So, when we get to the issue of how should this stuff  
5 be used, I do think it is common ground. We've said it could  
6 be used in this court. So if they want to use that in this  
7 court, okay, for whatever good cause they want to show, not  
8 today, because it should be done we think by motion, your  
9 Honor.

10 THE COURT: Let's talk about that a little bit. I  
11 want to resolve this because my sense is with regard to any  
12 application, in other words, future things that aren't before  
13 me, that it would be another petition or something under 1782.

14 MR. POWER: Not ex parte either, obviously.

15 THE COURT: Obviously it would be with service to --

16 MR. MARKS: Can I make one comment, your Honor?

17 THE COURT: Sure.

18 MR. MARKS: Your Honor's already ruled limiting these  
19 to outside the United States, being the BVI. But the problem  
20 we have, your Honor, within the United States, okay, right now  
21 they have all of this information regarding the related parties  
22 that has nothing to do with Warren Steel. Our position is that  
23 they shouldn't have it. We want to try to put the toothpaste  
24 back into the tube. Right now the toothpaste is out of tube,  
25 but at least it is in the bathroom here in New York. We don't

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1 want to have to chase this toothpaste to a bathroom in Alabama  
2 or a bathroom in Florida or a bathroom in Ohio.

3 We believe that the orderly approach would be to keep  
4 the protective order that your Honor entered this summer, limit  
5 the use of this to this court, or if they go to file in the  
6 BVI, to the BVI, but not to put us in a position where, if your  
7 Honor changes your decision like the Court in Alabama did, the  
8 Court in Alabama, as Mr. Power explained, after we had the  
9 interparty oral argument, she eliminated the discovery related  
10 to the related parties and limited it to the Warren Steel bank  
11 records.

12 But if your Honor were to change, were to give the  
13 relief that we're seeking, or if the Circuit Court were, we  
14 don't have to go chasing these records around the country. So  
15 that's our view on that. I hope that was --

16 THE COURT: So two parts. One part dealing with the  
17 issue relating to the protective order and whether or not they  
18 can utilize the documents in other 1782 applications.

19 MR. MARKS: Correct, your Honor.

20 THE COURT: But the second point relates to your  
21 motion, which relates to the scope of the initial grant here.

22 MR. MARKS: That's correct, your Honor. That's  
23 correct. That's correct. In terms of the scope of -- yes.  
24 Absolutely to the scope. Both to, unfortunately in our view,  
25 unfortunately, records that have already been produced that we

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1 want to claw back, okay. Because the scope, if there were  
2 wires to or from Warren Steel or wires to or from Halliwell,  
3 right, we understand that. Okay, for reasons such as the  
4 internal affairs doctrine, we don't agree they should have been  
5 discovered here, but we're not objecting to that on scope. We  
6 get that. We understand why those wires to and from, again,  
7 not all the information, because they don't need to know the  
8 bank accounts of individuals, but yeah, we understand where  
9 that is.

10 But in terms of the scope on these wires, yes, your  
11 Honor, we don't want these wires of unrelated parties, or  
12 excuse me, of the related parties that have nothing to do with  
13 this disseminated to all these other courts. Then we have to  
14 get that toothpaste in that bathroom and this bathroom and this  
15 proceeding should conclude before that happens. Thank you,  
16 your Honor.

17 THE COURT: Okay. With regard to the issue relating  
18 to related unrelated -- I'd like to hear from you. That is  
19 impacted by the protective order, to the extent that I would  
20 permit the use of documents in other 1782 applications, the  
21 scope, it implicates the motion that has been made by  
22 Mr. Symeou. Let me ask that with regard to the related wire  
23 transfers.

24 MR. POWER: Yes, your Honor. I would also like to  
25 focus on the term "related." When we approached your Honor at

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1 the very beginning back in December, we laid out, we believe in  
2 great detail the underlying reasons why we wanted various  
3 entities included in the subpoena. We didn't make these up,  
4 pulled out of thin air, tried to lasso in more entities than  
5 were necessary.

6 More than \$120 million has been allegedly loaned to  
7 Warren Steel by one or more of these -- I think there is 18  
8 entities. The reason why these entities are part of the  
9 subpoena anyway is they said they loaned money. There is some  
10 evidence of transactions being made into Warren Steel. But  
11 there is about \$60 million that the defendants, Mr. Symeou was  
12 unable to identify from a wire transaction. We also concur  
13 there is about \$60 million that's missing.

14 Now, when a party, a related entity, okay, owned by  
15 one of the other shareholders in a closed corporation  
16 transfers -- says he loaned \$120 million, and we see evidence  
17 that that's not true, and then we see evidence that we just  
18 uncovered last week with a production from Deutsche Bank, that  
19 \$82 million from Halliwell, this isn't just about Warren Steel.  
20 Remember, it was about Warren Steel as up until a week ago our  
21 client understood that Warren Steel was the only asset of  
22 Halliwell. Now it looks like there is another steel plant that  
23 could be an asset of Halliwell that was purchased with \$82  
24 million of Halliwell funds that we never knew about, that Symeou  
25 never disclosed. So transactions that involve only Warren

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1 Steel way is too narrow because of the way defendants have  
2 chosen. No one forced them to conduct their business using  
3 Mr. Korf's attorney account to make loans to Warren Steel. No  
4 one forced them to use 15 different related entities for  
5 transactions and alleged loans to Warren Steel. No one forced  
6 them to use Mr. Shulman's company Halliwell, of which he owns  
7 one-third, to take \$80 million of Halliwell funds and buy  
8 another steel mill and not let him know about it.

9 So it is the defendant's activities that have created  
10 the necessity to expand the scope beyond Warren Steel,  
11 Halliwell, and the related entities. We've limited it to the  
12 entities that have themselves -- remember, Mr. Korf is signing  
13 with one hand, with his left hand on the loan, one side of the  
14 loan agreement, and his right hand on the other, he signed on  
15 every one of the loans of the 120 million that is allegedly  
16 loaned to Warren Steel, Mr. Korf signed both sides on behalf of  
17 the borrower and the lender. And in fact, he also apparently  
18 funded some of this from his personal attorney's account in New  
19 York.

20 There has been statements made, I actually believe, I  
21 mean, I haven't verified the numbers, but yeah, there is a lot  
22 of money that's going around by and between all these  
23 companies.

24 What this is more akin to, it is not the toothpaste  
25 out of the bottle, it is the bloodhound on the scent of

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1 potential fraud. When a company transacts business in a proper  
2 means but commingles funds that it's been using to syphon out  
3 of Warren Steel, and as we've seen syphon out of Halliwell, the  
4 \$80 million, no one can explain that.

5 That is when the investigation, rightfully so, is  
6 given a little bit more latitude and leeway to explore the  
7 relationships between the different related parties, how they  
8 are getting the money, again, the premise of this is you have  
9 the one company in all of these 18 related entities that is  
10 losing millions and millions and millions of dollars, has  
11 essentially lost \$160 million over the last five years, and  
12 every other company of Mr. Kolomoisky is making tons of money.  
13 And we find out that \$80 million of Halliwell funds that was  
14 supposed to be used to fund the operations and so forth was  
15 diverted to buy another company for Mr. Kolomoisky. And the  
16 other company that was purchased, theoretically on behalf of,  
17 is one of the very entities that we have listed, and the Court  
18 found in the first instance was to be relevant enough and a  
19 related party. It was an entity that loaned money to Warren  
20 Steel.

21 So, at the very nature and the simplest transactions  
22 we are seeing, we see Halliwell, my client's money, one-third of  
23 it, to buy a steel plant on behalf of one of the other Optima  
24 entities, and we see Optima entities lending back to Warren  
25 Steel tens of millions of dollars. This whole circular system

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1 calls into question exactly the business practices of what  
2 these guys are doing, which supports what is the true value of  
3 Halliwell, because my client holds shares in Halliwell. What is  
4 the true value of all of the asset of Halliwell. Up until last  
5 week, we thought it was only Warren Steel. Now it may be the  
6 other steel plant that Halliwell purchased.

7 The transactions are listed in my letter, which,  
8 again, at first glance it is very easy to see it raises serious  
9 questions why is Halliwell transferring \$82 million on June 27  
10 of 2008 to purchase another steel mill that has nothing to do  
11 with Warren Steel. Again, there has been no disclosures that  
12 there has been any other assets of Halliwell other than Warren  
13 Steel.

14 So we think that in terms of related parties, that it  
15 is entirely appropriate at this time -- Mr. Marks, I think he  
16 knows these companies sort of. He said in the declaration to  
17 the Court that he has all his information from third-party  
18 sources.

19 Now, with all due respect, it is not really for us two  
20 attorneys at this point in time to determine thousands of  
21 transactions, what's relevant and not relevant, when the whole  
22 point of this is they're moving money back and forth between  
23 the companies, and I think we've demonstrated that for the  
24 Court. They've admitted that they do mostly all their business  
25 between Warren Steel's related party business. So there is no

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1 secret here they're doing all this business. Our allegations  
2 are they're selling product at a higher prior to Warren Steel,  
3 buying product at a lower price. That they're diverting funds  
4 that were put into Halliwell that were supposed to be used for  
5 Warren Steel, they've been diverting millions of dollars to  
6 other companies. They are taking profits out of Warren Steel  
7 and then into the other Optima entities, and then just loaning  
8 money back to Warren Steel, and then claiming a security  
9 interest to shut our client out of his shares.

10 Again, it is pretty much textbook. Again, I've seen  
11 this before, we just had a trial in Norfolk. The judge found  
12 very similar things happening by review of all the bank  
13 records. If you look at one bank record. Up until two weeks  
14 ago, Mr. Symeou's position was only Warren Steel's bank records  
15 are relevant. In fact, that's what they argued in Alabama, and  
16 the Court said I am going to split the baby here. I am going  
17 to take your arguments, Mr. Symeou's counsel, and we are going  
18 to limit this to Warren Steel.

19 Now, we may never get the Warren Steel records because  
20 there is now a big push to prevent us from getting the records.  
21 But up until two weeks ago it was Mr. Symeou's position that  
22 only Warren Steel's records are relevant. Lo and behold, we  
23 have Deutsche Bank produce a late production, and it shows that  
24 Halliwell now has transferred all of its funds to buy these  
25 other companies on behalf of these related entities.

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1           So again, at this point, neither myself nor Mr. Marks,  
2           as much as we may have investigated this case, not one of us  
3           knows enough and can verify to this Court at this point in time  
4           when we aren't able to cross reference the Regent bank records  
5           that we'd like to get in the near future, if Mr. Symeou is of  
6           the position that we can simply go to the BVI and request these  
7           records, which I can tell you our lawyers are telling us  
8           Mr. Symeou, who is the director of Halliwell, under BVI law can  
9           simply hand us a one-page piece of paper and say here's the  
10          summary of the status of Halliwell's business activities.  
11          They're not required to keep the books and records like we  
12          understand here. The BVI court does not have jurisdiction over  
13          Regent Bank in Alabama, which the Alabama court quite aptly  
14          noted. Saying even though you may be able to request them,  
15          there is no guarantee they're going to give them or that the  
16          documents that are given are going to contain the full amounts.  
17          They're not going to be certified by the bank. They won't be  
18          directly from the source.

19                 In a case like this, for better or worse where there  
20                 is all these allegations, it is much better for all the parties  
21                 to get the documents from the source, so we don't have to go  
22                 and spend a year in the BVI arguing you didn't give us enough,  
23                 you doctored the records, things were not produced properly.

24                 The best way to challenge a party who has been, we are  
25                 alleging, is not producing truthful records, either in summary

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1 form or what have you, is to verify the records from multiple  
2 independent sources.

3 I've been doing this for a long time. The best, the  
4 best way that the Court can be sure, we can be sure, that the  
5 records match up is by cross referencing the wire transactions  
6 that we see from the intermediary banks as well as the actual  
7 records from the Regent Bank productions that we were hoping to  
8 get as of today.

9 So I would, again, state that to the extent that we do  
10 not believe that we should be addressing relevant transactions  
11 at this point, because of the reasons I've said.

12 There is another category which we're on board. We  
13 reached out to Mr. Marks. There is apparently what's been  
14 identified as unresponsive records. Unresponsive records has  
15 been identified as records which appear to have been produced  
16 by the banks for the words "Optima" and "CSC." It is almost  
17 exactly the same named company, but Mr. Marks I guess he's been  
18 consulting with his client, has determined and made a  
19 representation to us that those are not any of the Optima  
20 entities that are related.

21 Now, I don't know for sure, but I'm certainly willing  
22 to take Mr. Marks' word on that. That if in fact there is an  
23 Optima entity within these bank records that is not one of the  
24 related party Optimas, maybe the administrator at the bank who  
25 is running searches in compliance with the subpoena put in an

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1 Optima entity that looks exactly the same but it is not the  
2 same one. That's fine. We're happy to take those off the  
3 table. We're ready to discuss that, discuss it with Mr. Marks.  
4 I don't believe, from what I'm hearing, that is not the issue  
5 here.

6 What is really the issue is making a determination at  
7 this point based upon the counsel for Symeou's belief and  
8 representation that nothing is relevant unless they say it is.  
9 And I don't believe we're at that point yet. I believe that is  
10 some time down the road when we are able to cross reference the  
11 documents received from different sources like the very Regent  
12 Bank records that we thought we were going to get from Warren  
13 Steel yesterday.

14 THE COURT: Okay.

15 MR. MARKS: Can I respond to some of this, please?

16 THE COURT: Sure. I understand that the motion I  
17 currently have before me is for me to reconsider my initial  
18 ruling on the petition that was filed under 1782. The  
19 protective order, obviously, would govern any documents that  
20 have been produced under that. Obviously, what I would like to  
21 do is try and get the protective order in place with the  
22 understanding that there is a motion for reconsideration  
23 pending. Go ahead.

24 MR. MARKS: I just want to say, first of all, we  
25 dispute the characterization of the \$60 million. We submitted

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1 the evidence in the court in Ohio that demonstrated that the  
2 loans had been made. That's number one. He can say whatever  
3 he wants. I understand that.

4 Number two, on this \$80 million that went to the plant  
5 in Michigan, okay. Halliwell and Warren Steel were not  
6 operating companies at the time. Mr. Kolomoisky and  
7 Mr. Bogolubov decided to purchase a plant in Michigan, and the  
8 wires went through Halliwell because the people who were  
9 involved in that didn't realize I guess that Mr. Shulman had an  
10 interest. If they would go to the BVI, which they appear  
11 unwilling to do, and they were to get the records of Halliwell,  
12 the records of Halliwell would reflect that the 80 some million  
13 dollars was wired into Halliwell by entities that were  
14 associated with Mr. Kolomoisky and Mr. Bogolubov and it was  
15 taken from Halliwell and it was used to pay the facility in  
16 Michigan.

17 This concept that the same day he gets these records  
18 from Deutsche Bank and then can write a letter to your Honor  
19 alleging that somehow my clients have taken \$80 million of  
20 money that belonged to Halliwell of which Mr. Shulman had an  
21 interest, I would only say to your Honor that's the type of  
22 allegation without a foundation that we've had to deal with in  
23 the BVI, which resulted in an abuse; in Ohio, which resulted in  
24 the case being dismissed; and I'm forced to confront here.

25 But to get to the focus, your Honor, we don't have an

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1 objection to the wires being used before your Honor. Okay. If  
2 they have to be filed under seal, whatever it is, we have  
3 issues with that which we can discuss. But we think that the  
4 toothpaste has to be kept in the Southern District of New York  
5 unless they file something in the BVI. And that's a strong  
6 position of ours, because otherwise, until this proceeding is  
7 concluded, until your Honor makes your final ruling, and until,  
8 again, your Honor, I hope you rule in our favor, I don't know  
9 what you are agoing to do. But if you don't and I think it is  
10 fair game, your Honor understands the job we have to do, we are  
11 going to go to the Second Circuit just like we did in Alabama.  
12 It is not the right thing to allow the toothpaste to get out of  
13 Southern District of New York until this orderly process is  
14 complete.

15 THE COURT: This is what we're going to do. The  
16 parties agree that the materials can be used before me in  
17 connection with any motion practice or any future applications  
18 on notice under 1782. And as I understand it, the parties are  
19 in agreement that those documents will be filed pursuant to the  
20 protective order that will be entered into here.

21 With regard to the use of the materials in other 1782  
22 applications, I'm going to grant that with the following  
23 caveat: I'm not going to permit, while the current motion for  
24 reconsideration is pending, I'm not going to permit the use of  
25 those documents and the other 1728 applications outside of this

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1 jurisdiction until such time as I have an opportunity to rule  
2 on what Mr. Symeou has made an argument that it was too broad,  
3 in the first instance that I shouldn't have issued it, but in  
4 any event, that it is too broad and encapsulates too much, too  
5 many documents that are unrelated to what Mr. Symeou claims is  
6 the issue related to Warren Steel.

7 The first item in dispute is the protective order.  
8 Let's talk about the attorneys' eyes only. And let me just  
9 make sure I understand the parties' relative positions. Am I  
10 correct that the parties agree that, although in different  
11 degrees, that there should be an attorneys' eyes only  
12 designation? Let's start with that and then I want to go from  
13 there. Mr. Power.

14 MR. POWER: Your Honor, with respect to some entities  
15 that -- certainly not with respect to Halliwell and Warren  
16 Steel. We don't see any justification for an attorneys' eyes  
17 only designation of records that our client is so close to.

18 We also question the necessity of attorney' eyes only  
19 with respect to the related party transactions for the loans.  
20 Part of the whole thing is we need a forensics. In other  
21 words, the way evidence is introduced in the BVI, as we did it  
22 once before, is through a forensic accountant who analyzed  
23 these records. Everyone knows you don't do a document dump on  
24 a court. In fact, what is likely going to happen if there is  
25 1,000 wire transfers, we all know how litigation is. There is

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1 a couple kernels in each one. We haven't determined the kernel  
2 yet because we don't have access to the full scope of the cross  
3 reference records.

4 That being said, we would think that attorneys' eyes  
5 only would limit the ability for us to use it and assess it  
6 from a financial expert to put together the concepts of fraud  
7 and commingling and undervalued transactions, the very  
8 principles that we're looking to use this evidence for. So, I  
9 think it needs to be used sparingly.

10 Look, I do recognize Mr. Kolomoisky's transfers, Mr.  
11 Bogolubov's transfers, we are not interested in what he does  
12 to -- I forget where he take his wife out to dinner or if it is  
13 other people he's taking out, those are the kinds of things  
14 that we are not interested in.

15 But again, I would also like to advise the Court it is  
16 our position, this 60(b) motion came sort of without much  
17 warning. The way the Court has just couched it, and I believe  
18 we agree, is it is really a discovery dispute motion. We  
19 should have met and conferred. We've gone over these records.  
20 We would have said give us your attorneys' eyes only  
21 designations, you can leave them for a little bit, the whole  
22 scope is it shouldn't be our burden to remove the entire record  
23 that's been produced as attorneys' eyes only. We knew this  
24 would take six months go through that. We're still willing,  
25 we've offered to meet and confer. We've even offered to bring

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1 Mr. Fabrizio Campanile here who has been investigating this.  
2 He's been at this court, he's been in Alabama once. If they  
3 brought Mr. Symeou who may have more information than Mr. Marks  
4 about the records, again, we are just two lawyers who are  
5 coming into this from the outside. We don't know, frankly, the  
6 true nature of these transactions. There's other people better  
7 determined to determine what these transactions are for. So to  
8 limit them as attorneys' eyes only is to render them useless.

9 We think that no attorneys' eyes only on Warren Steel  
10 and Halliwell. No attorneys' eyes only on the related parties  
11 that purportedly made the \$120 million of loans. But people  
12 like Mr. Bogolubov and Mr. Kolomoisky's personal accounts,  
13 these are powerful men, stuff is sensitive. We're not  
14 interested in making a big deal out of all this. We're  
15 interested in figuring out how did they fund the money. Did  
16 they fund Warren Steel. Did they take undue dividends by  
17 taking money out of Halliwell through Warren Steel through  
18 Optima back to Mr. Kolomoisky. That's the thing we are going  
19 to be doing. We are not going to be looking at where he buys  
20 fur coats and other things.

21 If there is an attorney designation on those  
22 particular individuals that are very sensitive and I recognize  
23 the sensitivity, we're happy to work with that. We don't want  
24 a broadbrush attorneys' eyes only. In fact, it has been  
25 suggested we can't even show Halliwell records to Mr. Shulman.

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1 We have been fighting to just have our client see the very  
2 records of the companies in which he owns one-third in. I  
3 thinks that's the kind of sort of position that we're fighting  
4 with when there is this interest of locking everything down to  
5 the extent it serves no purpose.

6 THE COURT: What I'm grappling with is where the line  
7 is between the attorneys' eyes only information that the  
8 parties would seek to have as only the attorneys review, and  
9 what would be deemed confidential. In other words, material  
10 that can be viewed by others that the parties at least for the  
11 time being have indicated should be kept confidential, and  
12 perhaps filed under seal.

13 MR. POWER: So, if we want that distinction, from my  
14 perspective, no attorneys' eyes only, no confidentiality with  
15 respect to Halliwell and Warren Steel because our client is so  
16 close to that. Our client has the right to assert that  
17 privilege as well. All of the related party entities we're  
18 happy to do confidential. But that means, at least from what I  
19 recall from when we were trying to come to an agreement with  
20 the protective order, that means we got to share it within our  
21 inner circle. An attorney in the BVI has to be able to look at  
22 these records. What good is it you can't show anything to the  
23 attorney in the BVI? That's taking your order and vacating it  
24 itself by the limitation. We would like have forensic  
25 analysis. The protective order has a certification, so people

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1 who are going to look at this are going to sign it. And again,  
2 I'm certainly going to stand by it, I know the people I deal  
3 with will stand by it.

4 I'm happy to keep Mr. Bogolubov and Mr. Kolomoisky's  
5 information attorneys' eyes only. Not even confidential.  
6 We'll keep it at the maximum. I don't have to show that.  
7 Mr. Shulman won't have to see that. We can save that until the  
8 very end, after we fill in all the other blanks.

9 THE COURT: Let me hear from Mr. Symeou, Mr. Kadosh.

10 MR. KADOSH: Your Honor, I just want to take a step  
11 back and provide a little bit of context as to why we're  
12 seeking the attorneys' eyes only designation here and why it is  
13 so important in this case.

14 So attorneys' eyes only, as your Honor knows, like the  
15 quintessential use of it is when you have competitors and there  
16 is sensitive information that you don't want your competitor to  
17 see. And that's exactly the situation here, in the sense that  
18 they used to be business partners, Mr. Shulman and  
19 Mr. Kolomoisky and Mr. Bogolubov, and now they're having  
20 conflict, and frankly we don't want Mr. Shulman to see the wire  
21 transfers. Let's leave aside Warren Steel and Halliwell for a  
22 minute. Okay. I want to cabin those off.

23 THE COURT: Rather than cabining them off, why don't  
24 you state your position with regard to those two, so we can see  
25 if there is any sort of agreement.

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1 MR. KADOSH: With respect to those two, I think our  
2 only concern, and the only thing we want to designate as  
3 attorneys' eyes only with respect to the wire transfers  
4 relating to Halliwell and Warren Steel are if there is bank  
5 account numbers, Warren Steel is paying an employee. Right.  
6 We think we should be able to designate that bank account  
7 number, that's sensitive information, that we should be able to  
8 designate the bank account number as attorneys' eyes only. Or  
9 the bank account numbers, if there is a wire between Warren  
10 Steel and Kolomoisky, we don't want Mr. Shulman to know the  
11 bank account numbers, right. He can see the transfer, he can  
12 see the transfer, but we don't want him to see the bank account  
13 numbers for his competitors' bank accounts.

14 And I want to explain to you what we're concerned  
15 about here. Right, our principal concern is that these wire  
16 records, Hornbeam is seeking to have the ability to send these  
17 wire records overseas. And not only overseas, but to send them  
18 to jurisdictions that don't have the strongest rule of law.  
19 When we talk about, as the Court noted in its decision, what  
20 we're dealing is three Ukrainian oligarchs. So when Hornbeam  
21 seeks to have Mr. Shulman's associates and confederates and  
22 assistants and experts analyze these records, what this means  
23 in practice is that the bank account numbers and the wire  
24 records relating to Kolomoisky and Bogolubov, they're now in  
25 contention, are going to be going to the Ukraine where there is

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1 not a strong rule of law. It could be going to other countries  
2 where there is not a strong rule of law. And there is a not  
3 insubstantial concern, your Honor, that that information could  
4 be used by state actors by others to harm Mr. Kolomoisky's  
5 interests.

6 This is not an abstract concern. It was reported in  
7 the news last week that the Ukrainian government had arrested  
8 the second in command or Mr. Kolomoisky's chief confederate.  
9 We don't want Mr. Shulman to know where Mr. Kolomoisky's assets  
10 are, where his bank accounts are. It is not information that  
11 he or his associates or his confederates need to know. That's  
12 why we feel really strongly about this. This information is  
13 going to jurisdictions where it can really be used to harm our  
14 client. And so our entire position really flows from that  
15 fact.

16 Now, once we're in that position, we think that we  
17 should have the ability to designate anything not relating to  
18 Warren Steel or Halliwell, all the personal wire transfers, all  
19 the wire transfers of the entities that are owned by Kolomoisky  
20 or Bogolubov, that should all be able to be designated  
21 attorneys' eyes only.

22 Then with respect to Warren Steel and Halliwell, we  
23 think that the bank account numbers should be able to be  
24 designated attorneys' eyes only, because there is that same  
25 concern about the information getting into the wrong hands, out

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1 of the Court's jurisdiction, and places with weak rule of law.  
2 And that's why we feel like we need to be able to tag these  
3 records as attorneys' eyes only.

4 THE COURT: Just to be clear, to the extent the  
5 protective order is entered into here, I would expect anyone  
6 who gets the documents, whether they're here or anywhere in the  
7 world, would have to sign off on that. I know that may be,  
8 since they're outside of the jurisdiction, that may be of  
9 limited value.

10 But the bottom line is there are parties here that  
11 could be held responsible for the actions, I think as  
12 contemplated in the current protective order, my recollection  
13 is that there is provision for damages, should the protective  
14 order be violated.

15 Yes, Mr. Marks.

16 MR. MARKS: Hornbeam is dissolved. The only party  
17 here is Hornbeam. It is a dissolved Panamanian company without  
18 any assets. So, the fact that there may be people in Ukraine  
19 who sign this, that's not really very much protection. Whether  
20 they're Ukraine, Bracha, which is the parent of Hornbeam, your  
21 Honor, is in Liechtenstein. Liechtenstein doesn't enforce the  
22 judgments of any other country. That was one of the reasons  
23 that we put in a motion in Alabama that the protective order  
24 didn't provide us much protection. We understand the Court in  
25 Alabama did as much as it could. We understand your Honor will

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1 do as much as your Honor can.

2 What we say is if there is not a very strong remedy,  
3 give us a little self-protection, which, your Honor, they can  
4 always object.

5 THE COURT: That will be obviously any provision for  
6 either the attorneys' eyes only or confidential designation,  
7 that would be subject to the other party objecting to.

8 But let me ask this just with regard to a narrow  
9 question, then I'll allow Mr. Power to speak. Attorneys' eyes  
10 only, but what about retained experts by the attorneys? In  
11 other words, by you, Mr. Marks, on behalf of Mr. Symeou, or by  
12 Mr. Power on behalf of his client.

13 Some of this material, quite frankly, while I'm sure  
14 both of you have more facility with analyzing financial records  
15 and the like, there is something to be said for an attorney who  
16 hires an expert and that expert to review those documents. So  
17 let me hear on that specific issue.

18 MR. MARKS: Your Honor, if you're asking me, I am  
19 going to be very brief. Mr. Power already indicated he  
20 wouldn't object, he understood why we wanted it for the  
21 unrelated transactions of Mr. Bogolubov, of Mr. Kolomoisky, and  
22 also Mr. Korf.

23 Just for the record, your Honor, they're not our  
24 clients in this proceeding. Our client is Mr. Symeou, but  
25 obviously he's protecting the interests of the shareholders,

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1 and I think that goes without saying.

2 But your Honor, I don't see why any expert in or  
3 outside the United States would need to know the bank account  
4 number of an employee of Mr. Korf of Mr. Kolomoisky,  
5 Mr. Bogolubov.

6 As far as the Halliwell and the Warren records, we've  
7 all agreed they would be confidential, so you can't disseminate  
8 them. But we don't have an objection to the Halliwell and the  
9 Warren records being subject to confidentiality, and the  
10 experts signing the certification. God bless them. That's why  
11 they're experts. We understand that.

12 THE COURT: All right. Mr. Power?

13 MR. POWER: Yeah, I think what I'd like to just point  
14 out, we actually were the proactive party in saying it should  
15 not just be Hornbeam signing this, it should be Bracha, it  
16 should be Mr. Shulman and Mr. Kolomoisky and Mr. Korf. The  
17 parties that have an interest in these various transactions.

18 Mr. Marks is representing only Symeou. We are talking  
19 a lot about protecting the rights of all these other parties.  
20 I get it, because we're lawyers, we see their sensitivity. But  
21 now, I think there is also a line that Mr. Symeou can cross  
22 where he is arguing on behalf of all these other entities  
23 without any basis whatsoever.

24 My client is in Monaco. He has relationships in  
25 Switzerland. Most of the accounts, we can take this out, but

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1 my client is not in the Ukraine. Mr. Kolomoisky is in London  
2 or Switzerland as well. These are people that are in the  
3 world's financial centers. You can reach out to them. They've  
4 reached out to my client in Monaco, they have his addresses.  
5 Mr. Shulman, Bracha, and Hornbeam -- which is not dissolved, by  
6 the way. It is in the process of voluntarily being dissolved  
7 by a group of Liechtenstein lawyers who no longer want to use  
8 the company for holding shares of people in trust. We have  
9 three years before that's done. That's a lot of time.

10 But again, we are the ones who offered and suggested  
11 that Bracha and Shulman be signatories to this as well as sign  
12 certifications. Mr. Symeou didn't want Bracha and Shulman  
13 having access to these records, and simply wanted Hornbeam, who  
14 they say is an entity that has no ability to get any recourse  
15 from.

16 We had our names on here, I'm happy to put our names  
17 on here. Obviously, we've made known to our clients the types  
18 of seriousness of the confidentiality agreements in the United  
19 States and they recognize it. Our instructing counsels are  
20 lawyers. We deal with this.

21 So, we think a protective agreement is going to more  
22 than adequately address the issues of having this information  
23 disseminated to the four corners of the world.

24 And again, to the extent that there is a wire transfer  
25 from Mr. Kolomoisky directly to Warren Steel through a New York

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1 bank, that cat's out of the bag to some degree. If these wire  
2 transfers emanate from or to Halliwell or Warren Steel, there  
3 should be no attorneys' eyes only and no confidentiality. The  
4 United States court system already, as well as the protective  
5 order, we would redact bank account -- you're required if you  
6 are going to submit them anywhere to redact bank account  
7 numbers. These are things we would do in the normal course.  
8 For many of these records, attorneys' eyes only is not  
9 necessary to implement the protections that are already in  
10 place and can be crafted by the protective agreement.

11 THE COURT: I guess this is where I'm coming out on  
12 this issue. I'm hesitant, in fact I'm not going to sort of  
13 make prior -- attorneys' eyes only in the scheme of documents  
14 that get produced, I would imagine that the information that's  
15 attorneys' eyes only should be somewhat limited.

16 Having said that, I'm not in a position to make an in  
17 advance decision. Although I hear what the parties are saying  
18 with regard to Halliwell and Warren Steel and the issue with  
19 regard to the bank account numbers. I do think that certain of  
20 that information may be stuff that if it is redacted could be  
21 attorneys' eyes only in the unredacted version.

22 Having said that, with regard to the sort of related  
23 party transactions, I don't know what form that would take, and  
24 it may be that what will wind up happening is, again, as I  
25 mentioned, I would expect attorneys' eyes only to be a more

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1 limited subset of the documents that get produced. And  
2 obviously there maybe a substantial portion of the documents  
3 that are confidential.

4 But, I'm going to include the designation with regard  
5 to attorneys' eyes only, indicating to the parties as a general  
6 matter where sort of my thinking on attorneys' eyes only  
7 documents, and it may be that once and, again, the parties  
8 designate the material, either I or -- most likely I, because I  
9 typically retain discovery related matters, I have a sense this  
10 may become -- I hope it doesn't become a semi full-time job to  
11 regulate the discovery. But there may be disputes about what  
12 is covered by attorneys' eyes only versus confidentiality.

13 So I'm going to include the provision. I think what I  
14 intend to do overall is after the conference, go back, take a  
15 look at the redlined version that was submitted by the parties  
16 and create a version that I'll send to the parties which is the  
17 version that I think should be entered.

18 Obviously, there may be things that I've missed or  
19 nuances, so I'll allow the parties before we enter it to have  
20 their last word, so to speak.

21 Obviously, as I've already mentioned, with regard to  
22 using the information in other venues, that is going to be on  
23 hold until I rule on the motion for reconsideration.

24 Mr. Power, you alluded to this, as I understand it, am  
25 correct, Mr. Marks, that Mr. Symeou objects to having Bracha be

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1 part of the agreement?

2 MR. MARKS: Yes, your Honor. Bracha is a foundation.  
3 So it doesn't mean anything to me. First of all, it shouldn't  
4 be a party to the agreement because it didn't bring the  
5 application, and the Ohio court has already ruled it doesn't  
6 have standing to bring a case in the BVI.

7 Our position is simple. Mr. Symeou is the litigant.  
8 He will sign it on our side. Hornbeam is the litigant, whoever  
9 their liquidator is, that's the appropriate person to sign it  
10 for them.

11 If Mr. Kolomoisky or Mr. Bogolubov want the documents,  
12 they'll sign the certification. It is that simple. They will  
13 be treated like anybody else. They're not parties to this  
14 litigation. Same for Mr. Shulman. If Mr. Shulman wants the  
15 documents, again, it's not attorneys' eyes only for him, same  
16 for Mr. Kolomoisky and Mr. Bogolubov, they sign the  
17 certifications. It is really not a complicated thing in our  
18 perspective.

19 We have got two litigants: Hornbeam and Symeou. They  
20 sign it, counsel can sign it, of course. But anybody else,  
21 they're anybody else. They're no different than the experts,  
22 they are no different than counsel in the BVI or instructing  
23 counsel, who I guess is Mr. Campanile. If they want the  
24 documents, they sign, and they subject themselves to the  
25 jurisdiction of this court.

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1 MR. POWER: We think it is absolutely -- we are  
2 talking about relevance to the transactions. Mr. Symeou is a  
3 lawyer in Cyprus. We've seen he has very little exposure to  
4 any of the Optima entities. I would be surprised if he knows  
5 what any of these transactions are about. How are we going to  
6 engage in a meaningful discussion about relevance and not  
7 relevance unless Mr. Korf is a signatory to this and gets the  
8 records, Mr. Kolomoisky gets the records, Mr. Bogolubov gets  
9 the records, and the people that are instructing the parties to  
10 make these transactions and loans look at the records.

11 Mr. Symeou, and Mr. Marks --

12 THE COURT: Why isn't it sufficient that they sign the  
13 certification? In other words, I understand the one point, why  
14 isn't it sufficient if they sign the certification?

15 MR. POWER: Okay. Well, they would certainly have to  
16 sign the certification if they got the documents. But I'm  
17 struggling to see how this will work with the discovery dispute  
18 that the parties who -- Mr. Symeou is not a party to any of  
19 these transactions. He is an outsider by all means as to  
20 regards to Optima Steel, and all these other entities, 18  
21 entities Mr. Symeou has no relationship whatsoever. How are  
22 we going to engage in a discussion as to relevance of the  
23 transactions when you have a lawyer sitting in Cyprus who won't  
24 come to the United States and won't participate in the meet and  
25 confer to determine how these things are relevant.

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1 THE COURT: First speak to who on your side of the V  
2 do you believe should end up signing this?

3 MR. POWER: There is the four people that we've  
4 already disclosed to the Court prior to the previous order, and  
5 again, I would like to state for the record we have already  
6 disclosed to the Court who received the records. We are not  
7 holding any information back. There has been some allegations  
8 we refused to disclose.

9 Mr. Shulman has the records, Tatiana Ferrer, who is a  
10 Russian speaking lawyer in London got the records, who was  
11 working on the team, as well as Fabrizio Campanile. Those are  
12 the only people outside of the United States who have the  
13 records. Those are the only people that will get these  
14 records. Fabrizio Campanile, who is part of the legal team as  
15 defined by the original order already has the Deutsche Bank  
16 records, but we didn't give the Deutsche Bank records to  
17 Mr. Shulman. We wanted to hold off on that to get  
18 clarification from the Court. Those are the three people  
19 outside the United States.

20 In terms of BVI counsel, we would of course like to  
21 have them see the records and the forensic analyst FTI --

22 THE COURT: And the distinction I'm drawing, and I'll  
23 have to go back because I hadn't focused on this, is between  
24 signing here the protective order, and utilizing the  
25 certification process.

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1 MR. POWER: Frankly, I think your Honor was, if we are  
2 going to have somebody sign the certification, to the extent  
3 they are the people getting the records. I've disclosed who  
4 will sign the certification.

5 To the extent signing the protective order, if we  
6 don't include all the parties that will be looking at these  
7 things, the law firms just as the original protective order is  
8 probably just fine. I think the certification covers it.  
9 Because again, we are going to be in endless dispute as to  
10 whether Korf should be signing it, whether Hornbeam. I don't  
11 think that's necessary. I think the lawyers signing this is  
12 fine. Anybody who gets the records signs the certification,  
13 and we can put the issue to bed, as opposed to quibbling  
14 whether it is Bracha or Shulman or Hornbeam or over who has to  
15 sign this.

16 THE COURT: Mr. Marks.

17 MR. MARKS: Just quite simply, there is no quibbling.  
18 My experience is the parties sign protective orders. There's  
19 two parties: Mr. Symeou and Hornbeam. They should sign it.  
20 If you want the attorneys to sign it as well, we will do it.

21 THE COURT: Mr. Power, I don't know who would sign on  
22 behalf of Hornbeam, but is that an issue?

23 MR. POWER: No. It's fine. Hornbeam has given power  
24 of attorney. That's also not an issue. I will let the Court  
25 know, however, just like we did in Alabama, we would like -- if

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1 Bracha is not a party to this and there is going to be an issue  
2 with giving Bracha the records, I don't know if I'm hearing  
3 that's an issue or not. It is an issue, right? Is there an  
4 issue with Bracha having these records?

5 MR. MARKS: I have no idea. What is Bracha? People  
6 get records.

7 THE COURT: Rather than talking to one another.

8 MR. MARKS: Sorry.

9 THE COURT: I think that just to put a fine line on  
10 it. With regard to certifications and the like, obviously  
11 there are going to be individuals that sign the certifications.  
12 They may be signing in a representative capacity. In other  
13 words, I don't know who would be the individual at Bracha or  
14 who would be the individual at some of the other entities with  
15 regard to the certification. But with regard to who is going  
16 to sign here, it will be counsel, it will be the parties. And  
17 then with regard to certifications, typically when a  
18 certification is signed, the party just goes to the individual  
19 and they sign it within the confines of the protective order.  
20 In other words, they would be allowed to see documents that are  
21 confidential, and then agree to keep things confidential.

22 Yes, Mr. Marks.

23 MR. MARKS: It was agreed, and I don't mean to  
24 interrupt, it was agreed, it is in both drafts that all the  
25 documents will be deemed confidential. Sorry.

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1 THE COURT: That's all right. So, what I'm asking  
2 you, is it your position, Mr. Marks, that I would have to  
3 police who signs a certification?

4 MR. MARKS: Your Honor, if I want Mr. Novikoff to get  
5 the documents, he is an assistant. He was disclosed by them in  
6 the Ohio proceedings. If I want Mr. Novikoff to get the  
7 documents, so for example, he can assist me, then Mr. Novikoff  
8 has to sign. If I wanted Mr. Bogolubov to get the documents --  
9 I'd like to meet him, I've never represented him, that would be  
10 a good reason to go to London. But everybody's equal.

11 THE COURT: Okay. I think I have where the parties  
12 stand. So I think I won't say resolved. I think we can move  
13 on to the next issue regarding the dates, and I'll figure out  
14 what the timing is with regard to control dates for various  
15 things to occur.

16 MR. MARKS: Your Honor, just to mention, in terms of  
17 attorneys' eyes only, we want that to be 10 days from the date  
18 of the order. We've been relying on that and we haven't marked  
19 anything attorneys' eyes only. We didn't have those documents  
20 for months. It is not something honestly where we hope to use  
21 very much, but we haven't done it yet.

22 THE COURT: I thought it was 10 days from date of the  
23 order or the production if they're produced in the future. And  
24 that's the version I was thinking about. There didn't appear  
25 to be that much of a dispute with regard to that. But I think

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1 that's fine. Ten days with regard to the documents that have  
2 already been produced, to get that in order, and then 10 days  
3 with regard to new documents that might get produced. I'm okay  
4 with that.

5 Paragraph 15. Just to be clear, Mr. Marks,  
6 Mr. Kadosh, I think you referenced Section 14 in the section of  
7 the joint letter. I think that should be Section 15 when  
8 you're talking about destruction of responsive materials.

9 MR. KADOSH: Yes.

10 THE COURT: I don't know what the dispute is here.  
11 Because on the one hand, there is some language which was  
12 stricken, the amended protective order does not affect any  
13 parties right to, and I assume it would be seek relief  
14 concerning the destruction. Then any party may seek the  
15 destruction of responsive materials --

16 MR. POWER: I don't think there is any dispute. I  
17 don't see anything. That might have been a difference in  
18 wording as far as I can see.

19 THE COURT: I'll take a look at that. All it's doing  
20 is allowing the parties the ability to apply to have documents  
21 it believes are not relevant to the litigation destroyed, and  
22 it would be a back and forth with regard to much of the other  
23 parts of the protective order.

24 MR. POWER: Section B, this is a point of contention.  
25 I don't know why it is not highlighted and asterisked and

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1     starred. It is the one year issue. The judge in Alabama just  
2     granted five years. I think the Court can see that the  
3     discovery disputes is going to be a long haul. We were  
4     expecting the Regent bank records. One year in this  
5     environment is like two weeks. It is like dog years here. So  
6     I think one year is way too -- I am happy to come back to the  
7     Court and report after one year. I think one year, we may be  
8     appealing, as the defendant said, to the Second Circuit, we may  
9     not be using anything at any time soon.

10           THE COURT: As I read this, it basically says all of  
11     the documents, and I assume one year from the date of the order  
12     if you don't start the action in the BVI. Let me think about  
13     that. But I understand what you're saying. And I don't know,  
14     the appeal in the 11th Circuit, is that something that can be  
15     or is expedited in some way? I'll take a look at that. I  
16     understand the argument there, and at a minimum, it may have  
17     one year but either party can apply to the Court for an  
18     extension of that time or something like that. I haven't  
19     thought about that in particular. I've had experience where  
20     these automatic destruction of materials, when people are sort  
21     of left to their own devices, when there isn't something to  
22     trigger them to do something, sometimes it happens, sometimes  
23     it doesn't. Sometimes there is a dispute and the parties don't  
24     even realize it until it is too late. But I'll try and  
25     structure some language there and the parties can take a look

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1 at it and let me know what they think.

2 Are there any other things that I have not covered  
3 that I need to cover with regard to the protective order?

4 MR. POWER: The attorneys' eyes only designation, I  
5 think our language on page four, it is taken out. I want the  
6 Court to know as a practical perspective, one of our concerns  
7 with a wholesale marking of pages, these are Excel spreadsheets  
8 and wires, we thought if you have a wire transfer that you are  
9 concerned about, you can't just mark the entire page. Let's  
10 work that out.

11 THE COURT: I think consistent with what we've  
12 discussed here, I think my general conception of attorneys'  
13 eyes only, it should be narrowly tailored. I think Mr. Marks  
14 has indicated certainly with regard to some bank accounts and  
15 things like that, it is not because there is a bank account  
16 number that means the whole page is. It may be that in some  
17 circumstances it is. But I am not going to give a ruling on  
18 documents that I haven't seen.

19 But I think everybody has gone through an exercise  
20 like this in other cases, attorneys' eyes only designations and  
21 confidential designations. So I'm relying on the parties in  
22 part to recognize where the line should be drawn. Mr. Marks,  
23 you were about to say something.

24 MR. MARKS: I was going to say there is one thing I  
25 think, your Honor, I think Mr. Power is not pushing it and I

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1 think your Honor has accepted, the limitation isn't going to be  
2 on both sides that you don't designate attorneys' eyes only for  
3 yourself. Mr. Symeou is protecting the interest of the  
4 shareholders of the company. So we would designate on behalf  
5 of Kolomoisky and Bogolubov if the wires are unrelated or if it  
6 has to do with the bank account information of an employee or  
7 something like that. So I wanted to make sure. It seems to me  
8 we're all on the same page.

9 THE COURT: I think so. With everything, the devil is  
10 in the details, and it may be that some of the documents there  
11 may be some kind of dispute over. We're not there yet, in part  
12 because I think the first order of business is to get a  
13 protective order that is going to be in place, and then the  
14 second order of business is for me to consider the motion for  
15 reconsideration.

16 Obviously, the one thing, Mr. Power, that you will  
17 have the ability to do, again, on notice, is if, based upon  
18 what we've discussed here today, if there are additional 1782  
19 applications you want to make in this district, what I would  
20 suggest is this: Before filing the petition, speak to  
21 Mr. Marks and Mr. Kadosh and see if you can work out at least  
22 some of the scope issues. I understand that you may not be  
23 able to work them all out, but it will limit the amount of  
24 paper that we end up having to get here, and hopefully you will  
25 be able to at least present to me what is really in dispute.

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1 Because there is some materials I think you would agree you  
2 don't necessarily need or want.

3 MR. POWER: Right.

4 THE COURT: And that there may be a way to limit that.

5 With regard to the protective order. Once I get all  
6 of the papers, I think there are some papers that are due for  
7 me today with regard to the motion for reconsideration.

8 MR. MARKS: We're going to agree to some -- it ties  
9 into something else, your Honor, that's on my agenda if I  
10 might. We're happy to provide extension, brief or not brief,  
11 depending on two things.

12 One is, your Honor, there is the issue of the  
13 subpoenas on the service providers, which again, I can explain  
14 to your Honor why that's going to involve -- it's going to  
15 something that is subject to the motion for reconsideration.  
16 Currently there is a protective order that precludes the  
17 service of new subpoenas. That's the order that you entered I  
18 think in July or August. It was after the June hearing. We'd  
19 like to keep that in place so that the service provider  
20 subpoenas don't go out. Because that's going to again involve  
21 a protracted level of litigation that we would like to avoid.  
22 Perhaps your Honor will moot that or perhaps there is a way we  
23 can agree to do exactly what happened in Alabama. To at least  
24 limit it to the materials that are related to Halliwell and to  
25 Warren. So that's one issue.

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1 THE COURT: By service providers you mean  
2 professionals?

3 MR. MARKS: PricewaterhouseCoopers, White & Case, and  
4 KPMG. Your Honor, what happened there is there is a ferroalloy  
5 business. Mr. Shulman has no interest in the ferroalloy  
6 business at all. One of the companies in that, Felman, does  
7 provide product to Warren Steel. White & Case was engaged to  
8 do a potential IPO of that business. The consultants were KPMG  
9 and PricewaterhouseCoopers. Mr. Powers attaches Exhibit 3 a  
10 decision in London where White & Case was disqualified from  
11 representing Mr. Pinchulk against Mr. Kolomoisky and  
12 Mr. Bogolubov in London because they did the due diligence here  
13 in the United States, and they were adverse to them on the  
14 ferroalloy business. That had nothing to do with Warren Steel.  
15 They saw that published decision in England. They asked your  
16 Honor for permission to put the subpoena on the service  
17 providers. It is very broad because it goes to all the  
18 documents that they have regarding the different related  
19 parties. Optima Management, Felman Production, Georgian  
20 American Steel. We ask that service of that be delayed and  
21 perhaps you can instruct Mr. Power and I to see if we can  
22 negotiate limitation on that, so at least it would be done in  
23 the way that it was done in Alabama, limited to Warren Steel  
24 and to Halliwell.

25 THE COURT: These are professional lawyers or

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1 accountants or the like. I understand they haven't been  
2 served, but my concern is that through their normal processes,  
3 these entities are --

4 MR. MARKS: We do not object if the subpoena is served  
5 for preservation. That's not a problem.

6 THE COURT: Let's get that.

7 MR. MARKS: Just one second. They may have a problem  
8 because it may be burdensome for them, but we don't have a  
9 problem.

10 THE COURT: They can come in and object. Having been  
11 at a law firm, I haven't been at an accountant firm, but they  
12 tend to keep records for a fairly long time anyway. But I  
13 think for purposes of preservation, it makes sense to have that  
14 happen, and you should probably submit maybe even a joint  
15 letter to those parties explicitly telling them that it is for  
16 preservation, there is no need feed for them to begin  
17 gathering, assembling, but they need to do whatever document  
18 preservation steps that they typically take when they receive a  
19 subpoena.

20 With regard to the scope and the like, the parties  
21 should meet and confer on that. Again, it's been a while since  
22 I looked at those specific subpoenas. And Mr. Power, determine  
23 whether all of the material that would be covered by the  
24 subpoena is still stuff you would be interested in.

25 MR. POWER: Okay.

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1 THE COURT: Mr. Marks mentions the ferroalloy  
2 business. If that's something that could be carved out,  
3 perhaps that can be carved out. Because part of the scope  
4 issue I think I am going to be visiting or revisiting in  
5 connection with the motion for reconsideration. So, serve the  
6 subpoenas, we'll hold any response in abeyance until I rule on  
7 the motion for reconsideration.

8 MR. MARKS: The other item on my agenda, your Honor,  
9 is we provided to you the related persons chart.

10 THE COURT: Yes.

11 MR. MARKS: If your Honor has that. There's two  
12 things. I wanted to briefly explain it to your Honor and then  
13 I wanted to make a request if I could.

14 THE COURT: Okay.

15 MR. MARKS: As I say, we only got these documents  
16 within the month and we went through them. And the wire  
17 records, as your Honor knows, they indicate who the originator  
18 is, who the beneficiary is, and it has the address, and  
19 obviously it has the amount of the wires. The other side has  
20 had these documents, we don't know when they got them because  
21 they haven't provided their correspondence with the banks which  
22 we want to have. Because discovery should be transparent, and  
23 we've requested they provide the correspondence with the banks  
24 so we can put together the chronology of what happened and find  
25 out why the banks were producing over 9,000 records that have

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1 nothing to do with this case.

2 It took us a week, just a week, your Honor, to figure  
3 out, based on the names and the addresses and doing Google  
4 searches, that we have thousands of records of regulated  
5 companies of investment funds, Optima Group Holdings LLC,  
6 Optima Fund Management LLC, these are hedge funds that are  
7 regulated in New York. We've got wire records of information  
8 technology companies. We have wire records of investment  
9 banks. We have no business having at all. And these are wire  
10 records that have been disseminated to a lot of people who are  
11 outside of the United States.

12 We're very uncomfortable about that. There is an  
13 ethical rule which deals with attorneys having possession of  
14 records which are inadvertently produced. We don't understand  
15 how it happened that the records of these unrelated parties  
16 were produced months ago. And neither this Court was told  
17 about that at the June 22 hearing or we were told about it.  
18 Because if I had known that there were 9,000 records of  
19 unrelated companies, I wouldn't have wanted them. I don't want  
20 them on my servers, I don't want them in my office. We  
21 shouldn't have them.

22 And what we are asking your Honor do is to order the  
23 other side to produce their correspondence with the banks,  
24 their e-mails, whatever it is, so we can get a handle on why  
25 this occurred.

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1           And then we are going to ask your Honor, it shouldn't  
2 be our obligation, but there has to be a process where these  
3 banks are notified, and certainly at least the entities that  
4 are most significantly impacted are notified about what  
5 happened.

6           It is a problem in my mind that people have in my  
7 office, innocently, in Mr. Power's office and people associated  
8 with him have wire records of \$400 million of a hedge fund, of  
9 \$100 million of these other companies. So I don't know what  
10 happened. If there hadn't been ex parte communications with  
11 the banks, if we had been included in that process, we would  
12 have understood what happened. We don't know if they were  
13 instructed to do searches. Whether they made the mistake  
14 themselves. We want to get to the bottom of it. Ethically,  
15 I'm concerned about it, and I don't want to have happen in a  
16 year from now that somebody releases these records, and these  
17 people find out that this happened, and they would blame me or  
18 somebody else.

19           THE COURT: Well, I think in the first place they  
20 would blame the bank for releasing the documents.

21           MR. MARKS: Can we get the correspondence?

22           THE COURT: Let me hear from Mr. Power about that.

23           MR. POWER: Your Honor, in one of your orders you  
24 instruct the parties to chill. I hate to say it, with all due  
25 respect.

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1 MR. MARKS: I'm chill.

2 MR. POWER: We've been waiting for this moment of  
3 basically I gotcha.

4 The records. And this is one of the sheets that  
5 Mr. Marks handed up to the Court, it is unrelated persons. If  
6 you look, Optima Group Holdings, Optima Fund Management, CSC  
7 Arabia, CSC Australia, CSC Japan, CSC Vietnam. We see the  
8 pattern. Obviously someone at the bank -- we don't have  
9 intimate knowledge of these entities, and I am not sure  
10 Mr. Marks does either.

11 To the extent these entities have nothing to do with  
12 the related parties and are not responsive to the subpoena, it  
13 has been disclosed, we've been asking for a list. We did not  
14 look at our records to look for ways to hold ourselves  
15 responsible for the bank producing records that weren't  
16 responsive. Mr. Marks is looking for e-mail exchanges, all  
17 these things. It is obviously a buildup to say we did  
18 something wrong.

19 I can say to the Court we did nothing but serve the  
20 subpoena on the bank. We answered any questions they might  
21 have had. It is very obvious, 100 percent obvious that any of  
22 the unrelated persons that's unresponsive production is only  
23 because the names are so exactly the same. We're happy to get  
24 rid of them. We hope to do that. Mr. Marks has asked me many  
25 times to ask the banks to expand the scope. Absolutely not.

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1 So, if we are going to engage in this witch hunt, I'm happy to  
2 do it, and we'll do it aggressively against any suggestion that  
3 we've done anything wrong. If that's where Mr. Marks is taking  
4 this, then that's fine. We'll address it head on.

5 If, on the other hand, his concern truly is to deal  
6 with a mistake by the bank in producing records that are not  
7 responsive to the subpoena, that's a very easy fix.

8 Now, again, I have a belief as to what the true  
9 intentions are of that. I frankly don't care, I don't want,  
10 we're not going to use records of somebody that's not  
11 responsive. But again, I think we have been asking for a list  
12 of the unresponsive parties that have been identified over the  
13 last three weeks. We just got this last night.

14 THE COURT: Okay. What about the request for  
15 correspondence or e-mails with the bank?

16 MR. POWER: We have produced correspondence, letters  
17 with the bank. To the extent there's e-mails, that would  
18 require, one, going back and forth with our system. I can just  
19 tell you historically the representations dealings with the  
20 bank are they call us up, ask for an extension. They leave a  
21 message. They pass it over to one of our colleagues. We just  
22 looked at our records when Mr. Marks asked to get the  
23 production, we did go to our records. That's where we found a  
24 Deutsche Bank letter that said, hey, we're waiting for you to  
25 send us over a protective agreement. So, there is another

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1 letter from Wells Fargo who we don't have any production from.  
2 We sent them a letter saying -- this was probably six months  
3 ago, there is an outstanding production. What are you going to  
4 do about it. We've heard nothing.

5 So we have produced pretty much all the records that  
6 were we were able to find from the files that have been  
7 maintained by the paralegal and by the associate. When I get  
8 these things, I forward them over to somebody.

9 I think really what Mr. Marks was asking, and again,  
10 maybe he should tell the Court, is he looking to try to get  
11 information that we expanded the scope of discovery? The  
12 answer is no. And if we are going to have to go through all  
13 our system just to show we didn't expand the scope of discovery  
14 to include the very entities that he finds are unresponsive,  
15 we'll do that.

16 Now, as to the other correspondence, we gave them the  
17 cover letters, we've given all the cover letters that were on  
18 the subpoena. I'm a little unclear as to whether or not a  
19 e-mail from the bank saying can I have an extension to produce  
20 the discovery is responsive materials that were produced in  
21 response to the subpoena. But regardless, we will do what the  
22 Court finds. This is something we internally discussed.  
23 Mr. Marks' demand for every e-mail and voice mail and  
24 everything.

25 So, which again, is a huge undertaking to the extent

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1 the sole purpose of that is to see if we directed the bank to  
2 expand the scope to include these unrelated entities.

3 THE COURT: It sounds as if there have been some  
4 production of this material. But Mr. Marks, let me hear from  
5 you and then I'll make a ruling.

6 MR. MARKS: Your Honor, I've really been pretty chill  
7 and I don't really think the concept of a witch hunt is an  
8 appropriate accusation to be made about me.

9 Our position is that subpoenas shouldn't be served ex  
10 parte. There shouldn't be communications ex parte between the  
11 persons serving the subpoena and the recipient. That it should  
12 be a transparent process. We've been cut out of that process  
13 not only from the beginning, but most recently because they  
14 never provided this letter from Deutsche Bank or reminding  
15 Deutsche Bank. We had no idea there was discovery outstanding  
16 from Deutsche Bank until November 3 when they sent it to us.  
17 They never provided us a followup letter to Wells Fargo. We've  
18 not received any of this.

19 On the one hand Mr. Power says there is not very much  
20 communications because I guess they leave voice mails for each  
21 other, and then he's saying this is something -- all we want is  
22 the communications. If there are e-mails to and from the bank,  
23 there are only so many people, Mr. Barry, Mr. Power, who was  
24 ever involved. Let's produce them so the Court can understand  
25 what happened.

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1 THE COURT: I won't require some computer search. But  
2 the individuals who were responsible, whether it is a paralegal  
3 or attorneys at your firm, Mr. Power, who dealt with the  
4 different entities that were subpoenaed, have them review their  
5 files. And see both in terms of paper files that they may have  
6 but also electronic files for communications with the banks  
7 relating to subpoenas, to the extent you haven't already  
8 produced that material, I'd ask that you turn that over.

9 With regard to going forward, both sides, from now on,  
10 any communications with subpoenaed parties, you should copy  
11 your adversary.

12 Mr. Power, if someone from your office is making a  
13 request or following up, they should copy the adversary.  
14 Similarly, Mr. Marks, if someone from your office is following  
15 up with a subpoena with an entity that's already been  
16 subpoenaed, you copy your adversary.

17 MR. MARKS: May I clarify that? And I appreciate your  
18 Honor allowing us to see the communications. As far as the  
19 banks are concerned, if there is any further communications  
20 with the banks, we consider them to be third parties, we will  
21 copy Mr. Power on all communications and vice versa. As  
22 concerns White & Case, that's a complicated issue, your Honor.  
23 Because they are the attorneys for some of the related  
24 entities, and there is an attorney-client privilege. If and  
25 when anything had to be produced, there is going to be

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1 communications between White & Case and lawyers who represent  
2 those entities. And also Pricewaterhouse Coopers and KPMG are  
3 not third parties either.

4 So what I would ask your Honor to do is distinguish  
5 between the third parties which are the banks and require both  
6 of us to have no ex parte communications, but not apply that  
7 same rule to the entities where there are relationships. We'll  
8 abide by what your Honor says, but I don't see how White & Case  
9 can deal with a subpoena.

10 THE COURT: They also haven't responded yet.

11 MR. MARKS: They haven't been served.

12 THE COURT: They are going to be served, as I  
13 mentioned, in some form of joint submission to them what their  
14 responsibilities are, what is expected of them with regard to  
15 preservation.

16 With regard to any future communications, I think  
17 nothing is going to be produced unless and until I rule on the  
18 other issues. So I'm not saying that with regard to those  
19 entities, Mr. Marks, because there isn't any ongoing subpoena  
20 response because it's going to be held in abeyance, those  
21 communications you don't have to share with your adversary.

22 MR. MARKS: Thank you, Judge.

23 THE COURT: Is there anything else we need to deal  
24 with today? I am going to try, and obviously there is a lot of  
25 material that I have to look at. I am going to try and get the

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1 transcript, or at least a rough, so I can make sure that I'm  
2 marking up the protective order. But my intention is to get it  
3 to the parties in the next couple of days, and certainly before  
4 the end of the week.

5 With regard to the extension, just submit a letter to  
6 me or e-mail saying what you've agreed upon with regard to  
7 that, or if there is a dispute I'll resolve that. This is the  
8 extension with regard to the briefing on the motion for  
9 reconsideration.

10 As I mentioned, Mr. Power, if you do intend to make  
11 some additional 1782, typically they would go to the Part 1  
12 judge, but I agreed to keep this. And so, they should come to  
13 me.

14 MR. POWER: Yes.

15 THE COURT: But I expect the parties to meet and  
16 confer before I get the submissions. In part because it may  
17 alleviate some work that the parties have to do and may focus  
18 the issues that are in dispute that I have to decide.

19 MR. MARKS: Thank you for your generous amount of  
20 time. We appreciate it very much.

21 THE COURT: It is a fair amount of time.

22 MR. MARKS: If you go five more minutes, we can each  
23 bill two hours.

24 THE COURT: Unfortunately, I have no one to bill. We  
25 are going to stand adjourned. Thank you very much.